

STANTON

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RECEIVED IN CHAMBERS
OF JUDGE STANTON
8/25/09

VIACOM INTERNATIONAL INC.,
COMEDY PARTNERS,
COUNTRY MUSIC TELEVISION, INC.,
PARAMOUNT PICTURES CORPORATION,
and BLACK ENTERTAINMENT TELEVISION
LLC,

Plaintiffs,

v.

YOUTUBE, INC., YOUTUBE, LLC, and
GOOGLE INC.,

Defendants.

Civil Action No. 07-CV-2103
Judge Stanton

STIPULATION & ORDER
REGARDING VIACOM'S
COPYRIGHT MONITORING
PRIVILEGE ASSERTIONS

THE FOOTBALL ASSOCIATION PREMIER
LEAGUE LIMITED, BOURNE CO. (together
with its affiliate MURBO MUSIC PUBLISHING,
INC.), CHERRY LANE MUSIC PUBLISHING
COMPANY, INC., CAL IV ENTERTAINMENT
LLC, ROBERT TUR d/b/a LOS ANGELES
NEWS SERVICE, NATIONAL MUSIC
PUBLISHERS ASSOCIATION, THE RODGERS
& HAMMERSTEIN ORGANIZATION, STAGE
THREE MUSIC (US), INC., EDWARD B.
MARKS MUSIC COMPANY, FREDDY
BIENSTOCK MUSIC COMPANY d/b/a
BIENSTOCK PUBLISHING COMPANY,
ALLEY MUSIC CORPORATION, X-RAY DOG
MUSIC, INC., FEDERATION FRANCAISE DE
TENNIS, THE SCOTTISH PREMIER LEAGUE
LIMITED, THE MUSIC FORCE MEDIA
GROUP LLC, THE MUSIC FORCE LLC, and
SINDROME RECORDS, LTD. on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

YOUTUBE, INC., YOUTUBE, LLC and
GOOGLE, INC.,

Defendants.

Civil Action No. 07-CV-3582
Judge Stanton

Doc. 150

RECEIVED IN CHAMBERS
OF JUDGE STANTON
AUG 24 2008
UNITED STATES DISTRICT JUDGE

Viacom International, Inc. et al v. Youtube, Inc. et al

WHEREAS, following a pre-motion conference on July 17 2009, Defendants in the above-captioned action (“YouTube”) filed a motion to compel on July 27, 2009 asking the Court overrule certain of the Viacom Plaintiffs’ (“Viacom”) privilege assertions (“July 27 Motion”) (a true and correct copy of YouTube’s memorandum supporting its July 27 Motion is attached hereto as Exhibit A).

WHEREAS, Viacom has stipulated that the Court may enter the relief Defendants sought in their July 27 Motion.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel of record, for the parties hereto, that following terms shall govern the stipulated relief to be entered by the Court concerning the July 27 Motion:

1. **Viacom’s Agreement to Produce Certain Documents.** Subject only to the exception described in paragraph 2 below, Viacom withdraws its claims of privilege and work product as to all documents or portions of documents falling within the three categories described at page 38 of the Memorandum of Law in Support of Defendants’ Motion to Compel (“July 27 Memorandum”) (Ex. A). Accordingly, Viacom will produce documents or portions of documents that reflect: (1) Viacom’s decisions to upload or authorize the uploading of videos to the YouTube service; (2) Viacom’s guidelines or policies for allowing videos to remain on YouTube for marketing, promotional, or other business reasons, including the implementation by Viacom’s agents of Viacom’s decisions not to request (or to delay requesting) the removal of such videos from YouTube; or (3) takedown requests issued to YouTube on Viacom’s behalf regarding material that Viacom authorized to appear on YouTube or otherwise wished to remain on YouTube for marketing, promotional, or other business purposes.

2. **Exception to Paragraph 1.** Viacom will not produce documents or portions of documents described in paragraph 1 only to the extent the document contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or communications prepared or obtained because of the prospect or pendency of litigation. In applying this exception, the parties agree that an express or implied instruction to allow material to remain on YouTube is not per se legal advice, regardless of whether it comes from a lawyer. If Viacom elects to withhold any of the above documents or portions of such documents based on a claim that it contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or contains communications prepared or obtained because of the prospect of litigation, Viacom will provide a privilege log identifying such documents and the basis for the claim of privilege with specificity. Both parties agree to meet and confer promptly regarding the entries on any log provided pursuant to this Paragraph prior to seeking a ruling from the Court. YouTube reserves its rights to challenge Viacom's claims that a document contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or contains communications prepared or obtained because of the prospect of litigation, including by seeking *in camera* review of any documents that Viacom withholds or redacts on this basis.

3. **Other Documents Viacom Agrees to Produce.** Viacom will produce (1) its agreements and statements of work with BayTSP, Auditude, and any other third-party monitoring agents, (2) documents sufficient to show the costs of the YouTube-related services those agents provide, and (3) documents, if any, reflecting that some of those

costs are attributable to Viacom's decision to instruct its monitoring agents to select for removal from YouTube *only* those videos that Viacom did not upload and that Viacom does not otherwise wish to remain on YouTube.

4. **Exception to Paragraph 3.** Viacom will not produce documents or portions of documents described in paragraph 3 only to the extent the document contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or communications prepared or obtained because of the prospect of litigation. If Viacom elects to withhold any of the above documents or portions of such documents based on a claim that it contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or contains communications prepared or obtained because of the prospect of litigation, Viacom will provide a privilege log identifying such documents and the basis for the claim of privilege with specificity. Both parties agree to meet and confer promptly regarding the entries on any log provided pursuant to this Paragraph prior to seeking a ruling from the Court. YouTube reserves its rights to challenge Viacom's claims that a document contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or contains communications prepared or obtained because of the prospect of litigation, including by seeking *in camera* review of any documents that Viacom withholds or redacts on this basis.

5. **Withdrawal of Privilege Claims Over Specific Documents.** Viacom will not assert any claim of attorney-client privilege or work-product protection with respect to any of the documents attached to the July 27 Memorandum (Ex. A), with the

exception of the document bates stamped VIA00330173-174, which will be produced in redacted form.

6. **General Applicability of Viacom's Production Obligations.** Subject only to the exceptions contained in paragraphs 2 and 4, Viacom shall produce and/or not object to the production of all documents described in paragraphs 1 and 3, including but not limited to: documents appearing on Viacom's August 5, 2009 metadata privilege log; documents from the files of Viacom's Second Set Custodians and Additional Custodians; documents in the possession of BayTSP, documents in the possession of Auditude; documents in the possession of third-party marketing agencies or any other third party that YouTube has subpoenaed in this action. Viacom will allow its witnesses to testify consistent with this Stipulation.

7. **Timing of Viacom's Document Production.** Viacom shall produce documents on the BayTSP privilege log covered by this Stipulation by September 15, 2009. Viacom shall provide a privilege log identifying any documents withheld pursuant to paragraphs 2 and 4 within 7 days of this production. Viacom shall produce the remainder of the documents on a rolling basis to be completed by October 1, 2009. Viacom shall provide a privilege log identifying any documents withheld pursuant to paragraphs 2 and 4 within 7 days of this production.

8. **Non-Waiver Agreement.** Subject to the parties' Non-Waiver Agreement, dated August 3, 2007, the act of producing documents pursuant to this Stipulation shall not be used by YouTube to support an argument that Viacom has waived privilege with respect to any other documents within its possession, custody, or control.

AGREED and STIPULATED

August 19, 2009

*Attorney for Viacom International Inc.,
Comedy Partners, Country Music Television,
Inc., Paramount Pictures Corporation, and
Black Entertainment Television, LLC*

By: 

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AGREED and STIPULATED

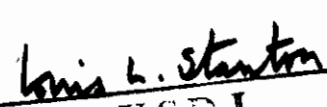
August 19, 2009

*Attorney for YouTube, Inc., YouTube, LLC
and Google Inc.*

By: 

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MAYER BROWN LLP
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SO ORDERED:



U.S.D.J.
8/24/09